

# GENERAL TERMS & CONDITIONS OF SALE



**bold**  
lighting

**Bold Lighting LLC («Bold Lighting»)** shall sell and deliver to Buyer the described goods («goods») only pursuant to the terms and conditions contained herein, which shall constitute the entire agreement between Bold Lighting and Buyer. No other terms or conditions shall be of any effect unless agreed to in writing by Bold Lighting. Buyer will be deemed to have agreed to these terms and conditions if Buyer accepts delivery of any part of the goods. Any additional or different terms or conditions contained in any purchase order of Buyer («Order») or Buyer's response to these terms and conditions shall be deemed objected to by Bold Lighting and shall be of no effect.

## 1 ○ ORDERS - INVOICES

Orders issued to Bold Lighting shall be deemed to have been issued by an authorized representative of Buyer. Invoices will be sent to Buyer at Buyer's address as set forth on the face hereof unless otherwise specified in Buyer's Order.

## 2 ○ TERMS OF PAYMENT

Except as provided in this section 2, all invoices shall be due and payable upon receipt. All Orders require a 50% deposit with the balance due prior to shipment. The minimum Order is \$500, which can only be waived with full prepayment.

Payment terms will be granted on an Order by Order basis at the discretion of Bold Lighting. Bold Lighting, without notice, may change or withdraw extensions of credit at any time, in which event Bold Lighting may require cash payments and/or Collateral security for account balances. All indebtedness outstanding for more than 30 days from the date of Bold Lighting's invoice shall be subject to a late payment charge equal to the lesser of (i) 1 and 1/2% per month, or (ii) the highest rate permitted by applicable law. Should Bold Lighting find it necessary to obtain assistance in collecting past due balances, Buyer shall pay Bold Lighting's reasonable attorney fees, collection fees and court costs. If Bold Lighting has to return a check to Buyer for any reason, Buyer shall pay Bold Lighting a service charge of \$35.00 for each such check.

## 3 ○ FREIGHT

Customer is responsible for all freight charges and handling charges. In the event goods require extra or special packaging due to the nature of the goods, the manner in which they will be transported or otherwise, Buyer is responsible for the extra charges therefore. All goods are sold FOB Bold Lighting's factory, unless otherwise specified. Additional information will be required before international Orders can be processed.

## 4 ○ DELIVERIES

Title to and risk of loss for all goods shall pass to Buyer immediately upon Bold Lighting's delivery thereof to the carrier. Shipments will be made via carrier selected by Buyer. Bold Lighting will endeavor to ship in another manner requested by Buyer, at Buyer's expense. Bold Lighting shall not be liable for shipment delays, or any loss or damage to goods while in transit, and all claims therefore shall be made immediately by Buyer to the carrier. Specified shipping date(s) are approximate only. Bold Lighting reserves the right to deliver goods in installments unless expressly prohibited in the applicable Order. Installment deliveries will be invoiced by Bold Lighting at time of shipment unless otherwise agreed in writing by Bold Lighting. Delay in any installment delivery shall not relieve Buyer of its obligation to accept all remaining installment deliveries pursuant to an Order.

## 5 ○ FORCE MAJEURE

Bold Lighting shall not be liable to Buyer or any other person, and Buyer

shall make no claim against Bold Lighting, for any loss, liability, cost, damage or expense (each a «Loss») resulting from Bold Lighting's failure or delay in the performance of any obligation under this Agreement, due to events beyond its reasonable control, including, but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, wars, riots and public disorder, sabotage, strikes, lockouts, labor disputes, labor shortages, work slowdowns, stoppages or delays, shortages or failures or delays of energy, materials, supplies or equipment, transportation embargoes or delays, acts of God, breakdown in machinery or equipment, or acts or regulations or priorities of the federal, state or local governments. Bold Lighting's period of performance shall be extended for the period of such failure or delay, and when the event causing such failure or delay in performance shall cease, Bold Lighting can complete its performance of an Order. Buyer agrees to make no claim for any Loss due to any such delay in the performance of an Order, and agrees that any such Loss shall be fully compensated for by Bold Lighting's completion of the Order. Buyer shall not impose any charge back, offset or other adjustment to the contract price which is not pre-approved in writing by Bold Lighting.

## 6 ○ PRICES, SPECIFICATIONS AND QUOTATIONS

(a) Prices, delivery terms and specifications are subject to change without notice. Bold Lighting's price list is not an offer to sell.

**(b)** Bold Lighting's written quotations to sell shall be binding upon Bold Lighting only for 60 days from the date of the quotation, unless otherwise specified. Orders accepted by Bold Lighting within the period designated in the quotation will be price protected for delivery for 90 days from the date of that Order. Bold Lighting reserves the right to withdraw any price quotation at any time for any reason prior to Bold Lighting's acceptance of an Order.

**(c)** Prices for lighting products are quoted without additional accessories unless otherwise specified in an Order. If lighting products are furnished by Bold Lighting, it is for Buyer's convenience and Buyer assumes the risk of loss or damage to the products and lamps while in transit.

**(d)** Bold Lighting will exercise reasonable commercial efforts to avoid errors in its website, electronic communications, catalogs, price sheets and other publications, but hereby disclaims all liability therefore should any occur.

**(e)** Prices shown on Bold Lighting's price lists are prices prevailing at the date of their publication. Bold Lighting reserves the right to change these prices without notice. Unless specifically provided otherwise in writing, Bold Lighting will invoice Buyer at prices prevailing at date of shipment. Prices are subject to applicable federal, state and local taxes, duties and customs fees.

**(f)** Bold Lighting shall treat additions to accepted Orders as separate Orders which will be priced and invoiced accordingly.

**(g)** In the event of a conflict between an Order and Bold Lighting's drawings or specifications with respect thereto which have been approved by Buyer, the approved drawing or specification shall in all cases prevail.

**(h)** Each Order which is accepted by Bold Lighting shall be independent of every other Order, and Bold Lighting will not be bound by general or blanket instructions Page 2 of 3 contained in or referred to in any Order. Order specifications and instructions must appear on the face of the Order itself.

**(i)** If Buyer asks Bold Lighting to delay shipment of any goods after they have been manufactured and made ready for shipment, Buyer shall pay for the goods and for storage charges until Bold Lighting receives instructions from Buyer to ship the goods.

**(j)** If Buyer refuses to accept any shipment from Bold Lighting, Buyer shall nonetheless be liable for the full payment thereof. Buyer shall also be liable for all of Bold Lighting's re-handling, reshipping, restocking and storage charges.

**(k)** Bold Lighting reserves the right to change any design, material, mean or method of manufacturing its goods if the change does not alter the visible appearance of the goods nor adversely affect their performance or function.

**(l)** Orders containing a phrase to the effect that «all material to be supplied as per project plans and specifications» are subject to Bold Lighting's separate written acceptance.

**(m)** Bold Lighting reserves the right to assess (1) a minimum cancellation charge of \$35.00 when an Order is cancelled and (2) an additional charge of 50% of the net price of the Order, and (3) additional costs specifically related to the Order, if the Order is cancelled after it has been made ready for shipment.

**(n)** All additions, deletions or other changes to an Order are subject to these terms and conditions.

**(o)** Orders marked in effect «Hold for Release» will not be entered for processing until Bold Lighting receives

and accepts Buyer's written release, and invoices for such goods will be at prices prevailing at the date of their shipment.

**(p)** Items specially manufactured to conform to customer's site-specific requirements, or purchased at customer's request, are cancelable only upon full payment of Bold Lighting's quoted price therefor.

## 7 SPECIAL ITEMS

Orders for special or custom goods are not cancelable by Buyer, unless the goods have not yet been manufactured, and then only upon Bold Lighting's receipt of Buyer's written notice of cancellation and payment of Bold Lighting's invoice for Bold Lighting's engineering and manufacturing work and special materials Bold Lighting ordered after acceptance of the Order but prior to Bold Lighting's receipt of Buyer's written cancellation. Cancellations of Orders must be in writing to be effective.

## 8 RETURNS

Before any goods may be returned to Bold Lighting for a reason other than pursuant to Section 9(d), Buyer, within 90 days from Buyer's receipt of the goods, must request, in writing, a Return Material Authorization Number («RMA») from Bold Lighting's Customer Service Dept. Each request shall contain (1) the Order number and date, (2) an itemization of the goods being returned, (3) the reason for the requested return and (4) an attached copy of the invoice. If Bold Lighting issues a RMA to Buyer, then Buyer may return such goods but only within 60 days from the date of the issuance of the RMA. Goods must be returned in the original, unopened, factory-sealed cartons, properly crated or packaged and shipped freight prepaid to Bold Lighting.

Special order, made-to-order, modified catalog items and discontin-

ued goods are not subject to return unless due to Bold Lighting's fault as described in Section 9(d), in which event such goods shall be returned in compliance with that Section. If Bold Lighting provides Buyer with a RMA, and if Buyer has returned the goods as described in this Section 8, then Bold Lighting will issue a credit to Buyer equal to Buyer's actual purchase price of the returned goods, less a 25% service charge for handling, inspection, repackaging and restocking, which in any event shall be not less than \$150.00. (d) An additional service charge of \$50.00 shall be charged to Buyer on all goods returned to Bold Lighting without a valid and current RMA, regardless of whether or not Bold Lighting agrees to accept the return of such goods.

#### **9 LIMITED WARRANTIES, LIMITATIONS OF LIABILITY AND CLAIMS**

Bold Lighting shall have no warranty liability or obligations whatsoever with respect to goods which are not fully paid for.

**(a)** All warranties are expressed in this Section 9 only and there are no other warranties, whether express or implied or statutory. Bold Lighting hereby warrants to Buyer that goods manufactured by Bold Lighting are (i) under normal use and service, in accordance with Bold Lighting's recommendations and specifications, merchantable solely to the extent that they are free of defective workmanship and material, but not against normal wear and tear, and (ii) unless otherwise specified, are listed by a recognized testing laboratory or manufactured with components listed or recognized by a recognized testing laboratory. With respect to goods sold by Bold Lighting but not manufactured by Bold Lighting, Bold Lighting shall make available to Buyer the manufacturer's warranty therefore but shall have no

other liability therefore. With further respect to goods not manufactured by Bold Lighting, warranty claims may be sent, and the related goods may be returned to Bold Lighting as set forth in the last sentence of Section 9(d), and Bold Lighting will, as an accommodation to Buyer, forward them to the manufacturer for settlement. Bold Lighting shall not be responsible for any settlement which Buyer and the manufacturer of such goods may reach.

**(b)** SOME GOODS MAY NOT CONFORM TO LOCAL CODES. BOLD LIGHTING HEREBY DISCLAIMS ALL LIABILITY FOR CLAIMS, AND WILL REFUSE ALL REQUESTS FOR EXCHANGES OR RETURNS, RESULTING FROM THE PURCHASE OF GOODS WHICH DO NOT COMPLY WITH LOCAL CODES. BOLD LIGHTING ALSO HEREBY DISCLAIMS LIABILITY FOR ANY FAILURE OF GOODS TO COMPLY WITH STANDARDS IMPOSED UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT AS AMENDED FROM TIME TO TIME.

**(c)** Bold Lighting shall have no warranty liability or other liability to Buyer or to any other person, for any Loss, under any circumstance, if any goods or any parts or components thereof have been (1) repaired or altered by anyone other than Bold Lighting, (2) misused or neglected or (3) used for a purpose not intended, or in a manner contrary to, prevailing commercial practices or to Bold Lighting's printed instructions or specifications.

**(d)** Buyer waives all claims for defective or nonconforming goods, shortages, and other errors in shipping unless Buyer is in complete compliance with this Section 9(d).

To return any such goods, Buyer shall first obtain an RMA from Bold Lighting's Customer Service Dept. If the claim is for defective goods, Bold Lighting must receive Buyer's written claim and the defective goods within

30 days after the occurrence which gave rise to the claim, but in no event beyond 365 days from the date of shipment of the defective goods. If the claim is for shortages or for any other error in shipping nonconforming goods, then Bold Lighting must receive Buyer's written claim within 30 days after receipt of the goods. Each claim shall contain (1) the RMA designated in a conspicuous place, (2) the Order number and date, (3) an itemization of the missing goods or the goods being returned or both, (4) the nature of Bold Lighting's fault and (5) a copy of the invoice. Buyer shall send the goods properly crated or packaged and freight prepaid to Bold Lighting.

**(e)** Buyer's exclusive remedy and Bold Lighting's sole liability under this Agreement on any claim, whether tort, contract, warranty or otherwise, shall be limited, at Bold Lighting's option either to repair or to replace without charge the goods returned pursuant to Section 9(d) and ship them back to Buyer, FOB Bold Lighting's factory, freight prepaid. In lieu of making any factory repairs or replacing any goods, Bold Lighting reserves the right to refund the purchase price of the goods or to make field repairs, in which event Buyer shall cooperate with Bold Lighting in arranging for the same. Bold Lighting shall endeavor to promptly resolve claims for shortages or for other errors in shipping nonconforming goods, but Bold Lighting shall have no liability for any delay in doing so. In no event shall Bold Lighting be liable for any other or further Losses of any kind whatsoever including, but not limited to, lost profits, special, incidental and consequential damages, regardless of the theory on which a claim therefore may be made or based.

**(f)** No sales representative, distributor or other person may authorize the return of any goods to Bold Lighting.



(g) Fuses, lamps and other consumables are excluded from any warranty whatsoever.

(h) As a condition to Bold Lighting's providing any on-site warranty or service work, Buyer shall provide ready and easy access to the goods to be serviced, whether the goods are located at Buyer's site or the site of a third party.

#### 10 ○ DEFAULT AND WAIVER

If Buyer defaults with respect to any payment or performance obligation whatsoever, in respect of an Order or any other agreement with Bold Lighting, Bold Lighting may, in addition and without prejudice to its other lawful rights and remedies (i) defer further shipments of goods until each default has been corrected to Bold Lighting's satisfaction, or (ii) terminate the Order. No course of conduct, nor any delay of Bold Lighting in exercising any rights hereunder, nor Bold Lighting's acceptance of a payment from Buyer with knowledge of an existing default or breach, shall waive any rights of Bold Lighting or be deemed a modification of this Agreement.

#### 11 ○ GOVERNING LAW

Each Order and these terms and conditions shall be construed to be between merchants. Any question concerning its validity, construction or performance shall be governed by the laws of the State of Georgia, United States of America. The exclusive venue for the resolution of all disputes shall be the state and federal courts located in the County of Fulton, State of Georgia, regardless of where any Order was placed or filled, the place of delivery of the goods or where any other act or performance occurred, and Buyer hereby consents to the personal jurisdiction of such courts.

#### 12 ○ MODIFICATION

These terms and conditions, including any attached or future schedules accepted by Bold Lighting constitutes the entire agreement between Buyer and Bold Lighting with respect to an Order, and may be modified only in writing, signed by the party or parties to be charged.

#### 13 ○ PERMITS

Buyer will obtain, at its own expense, any and all necessary licenses, permits and inspections necessary to permit the lawful purchase, installation and use of goods.

#### 14 ○ INDEMNIFICATION

Buyer shall indemnify and hold Bold Lighting harmless from each and every Loss incurred by Bold Lighting in connection with any claim, action or proceeding commenced against Bold Lighting or to which Bold Lighting is made a party, relating in any manner to Buyer's or Buyer's customer's purchase, installation, use, or ownership of any goods, except only to the extent of Bold Lighting's acts or omissions.

#### 15 ○ RETAINED SECURITY INTEREST

Until such time as the entire purchase price of the goods has been paid, Buyer hereby grants to Bold Lighting a purchase money lien and security interest in the goods to secure the payment of all amounts owed to Bold Lighting pursuant to the Order for such goods. The rights and remedies of Bold Lighting, as a secured party with respect to the goods, shall be governed by the Uniform Commercial Code, or applicable equivalent statute(s) of the locale in which the goods are located. Buyer authorizes Bold Lighting to execute and record on behalf of Buyer such financing statements and other instruments as Bold Lighting may deem necessary to perfect or protect its security interest in the goods.

#### 16 ○ INSURANCE

Until Bold Lighting has been paid in full for goods, Buyer shall maintain all risk insurance on the goods, protecting against any loss or damage thereto and Bold Lighting shall be named as loss payee thereof with respect to the goods. Buyer shall provide Seller proof of such insurance upon demand.

#### 17 ○ LIMITATION OF LIABILITY

Notwithstanding anything in an Order or these terms and conditions to the contrary, (i) in no event shall the aggregate liability of Bold Lighting to Buyer for any one or more Losses incurred by Buyer related to goods, exceed the amount actually paid by Buyer to Bold Lighting for such goods, and (ii) in no event shall Bold Lighting be liable for any lost profits, or for any special, indirect or consequential damages.

#### 18 ○ SITE CONDITIONS

Buyer assumes all risks associated with changes in site and/or field conditions, such as, by way of example only, changes in dimensions or site or facility design.



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